

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

JO ANN HOFFMANN

PLAINTIFF

v.

Civil No. 06-5073

MAX WILCOX, Commissioner of
Lands, et al.

DEFENDANTS

O R D E R

Now on this 13th day of June, 2006, comes on for consideration the **Report And Recommendation Of The Magistrate Judge** (document #4), and plaintiff's **Response To Report And Recommendation** (document #5) ("Objections"). The Court, having carefully reviewed both documents, finds that the R&R is sound in all respects, and that plaintiff's objections thereto are without merit, for the following reasons.

1. Plaintiff's Objections fall into three categories. She first objects that the Magistrate Judge was without jurisdiction to act in the matter, there being no consent. This objection is without merit, as the matter is not one where the Magistrate Judge's jurisdiction depends upon the consent of the parties. Plaintiff accompanied her Complaint with an Application To Proceed Without Prepayment Of Fees. Pursuant to this Court's **General Order 22**, applications to proceed without prepayment of fees ("*in forma pauperis*"), and questions of whether service of process shall issue in such cases, are referred to the Magistrate Judge, as authorized by **28 U.S.C. §1915(b) (1) (A)**.

Plaintiff was granted leave to proceed *in forma pauperis*, subject to a later determination as to whether the Complaint should be served upon the defendants. This was the posture in which the Magistrate Judge took up the issue of service of process.

28 U.S.C. §1915(e) (2) (B) provides that when a case is filed *in forma pauperis*, "the court shall dismiss the case at any time if the court determines that . . . the action . . . is frivolous or . . . fails to state a claim on which relief may be granted." Those were the bases upon which the Magistrate Judge recommended dismissal of plaintiff's claims. The Magistrate Judge was, thus, acting within the powers granted to her by this Court, and within the laws enacted by Congress for the handling of proceedings *in forma pauperis*.

2. Plaintiff also objects that the Magistrate Judge's "Facts, findings and Conclusions are not in accord with substantiated evidence." This objection is lacking in merit because the recommendations made by the Magistrate Judge are not fact-based, but law-based. The Magistrate Judge reported that the allegations made by plaintiff do not fall within the legal parameters of the causes of action asserted by her. At this point in the proceedings, the factual proof is irrelevant. Before she is entitled to present proof in support of her claims, plaintiff's claims must pass legal muster, and in this case, they do not.

3. Finally, plaintiff makes numerous legal objections, none of which - to the extent the Court is able to decipher them - have any merit. Those objections will, therefore, be overruled.

IT IS THEREFORE ORDERED that the **Report And Recommendation Of The Magistrate Judge** is **adopted in toto**.

IT IS FURTHER ORDERED that plaintiff's objections to the Report And Recommendation are **overruled**.

IT IS FURTHER ORDERED that, for the reasons stated in the **Report And Recommendation Of The Magistrate Judge**, plaintiff's claims are hereby **dismissed**.

IT IS SO ORDERED.

/s/Jimm Larry Hendren
JIMM LARRY HENDREN
UNITED STATES DISTRICT JUDGE